

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>		1. TRANSMITTAL NUMBER: 03-001	2. STATE Nebraska
<b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE January 1, 2003	
5. TYPE OF PLAN MATERIAL ( <i>Check One</i> ):			
<input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT ( <i>Separate Transmittal for each amendment</i> )			
6. FEDERAL STATUTE/REGULATION CITATION:		7. FEDERAL BUDGET IMPACT:	
		a. FFY 2004                      \$ 0	
		b. FFY 2005                      \$ 0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):	
4.17 Pages 53, 53a, 53b, 53c, 53d, and 53e		4.17 Pages 53, 53a. and 53b	
Attachment 4.17-A Pages 1-3 (new)			
10. SUBJECT OF AMENDMENT: Liens and Recoveries			
11. GOVERNOR'S REVIEW ( <i>Check One</i> ):			
<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT		<input checked="" type="checkbox"/> OTHER, AS SPECIFIED:	
<input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED		Governor has waived review	
<input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL:		16. RETURN TO:	
13. TYPED NAME: Robert J. Seiffert		Attn: Margaret Booth HHS - F&S P.O. Box 95026 Lincoln, Nebraska 68509	
14. TITLE: Administrator			
15. DATE SUBMITTED: March 24, 2003/Pen and Ink Corrections Submitted Nov. 4, 2003			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED: March 24, 2003		18. DATE APPROVED: November 6, 2003	
<b>PLAN APPROVED - ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL: January 1, 2003		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: Thomas W. Lenz		22. TITLE: Associate Regional Administrator for DMCH	
23. REMARKS:			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

LIENS AND ADJUSTMENTS OR RECOVERIES

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1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

The Department requires either a physician's statement indicating that the individual is unable to return to their home or the recipient's residence in a medical institution for a period of 6 months, whichever occurs first. Notice is given to the recipient when they enter the medical institution and he/she may appeal the Department's determination within 90 days in accordance with the procedures 465 Nebraska Administrative Code.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

N/A as the State does not impose TEFRA liens.

3. The State defines the terms below as follows:

- Estate means all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law.
- Individual's home: N/A as the State does not impose TEFRA liens.
- Equity interest in the home: N/A as the State does not impose TEFRA liens.
- Residing in the home for at least one or two years on a continuous basis: N/A as the State does not impose TEFRA liens.
- Lawfully residing: N/A as the State does not impose TEFRA liens.

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Transmittal # MS-03-01

Supersedes      Approved November 6, 2003    Effective January 1, 2003

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

4. Any one of the following situations may constitute an undue hardship:

- (1) An heir of the recipient resided in the recipient's home on a continuous basis for two years prior to the recipient's entry into a nursing home and the heir provided the type of unreimbursed care that delayed the recipient's entry into a nursing home;
- (2) An heir of the recipient resided in the recipient's home for two years prior to the recipient's receipt of recoverable medical services and the heir provided unreimbursed care that delayed the recipient's receipt of those services;
- (3) Payment of the Department's claim would cause heirs of the deceased recipient to be eligible for public assistance;
- (4) Waiver of the Department's claim would allow an heir to discontinue eligibility for public assistance for a substantial time period; or
- (5) Other compelling circumstances.

Any heir of the estate of a Medicaid recipient may apply for waiver of the estate recovery claim based on undue hardship. Any claim may be waived by the Department, partially or fully.

The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

A waiver applicant must be an heir of the estate and must apply for a waiver in writing within thirty days from the creditor's claim filing deadline or ninety days from the recipient's date of death if the estate is not probated. The written application must include:

- (1) A written statement of the applicant's relationship to the recipient with supporting documentation; and
- (2) A written statement of the basis for the hardship waiver under 471 NAC 38-004.02 with supporting documentation.

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The Department must review each application and issue a written decision within ninety days after the Department's receipt of the application. The Department's written decision must advise the applicant of the procedure for requesting an administrative hearing should the applicant want to appeal the Department's decision.

5. Recovery is not cost-effective when the cost of collection exceeds the amount of the Department's claim.
6. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

The Department evaluates cases for potential estate recovery via local caseworker referrals, attorney referrals and creditor's notices filed in probate proceedings. If the estate is being probated, the Department files a claim and follows the appropriate procedures as defined in the Nebraska Probate Code. If the estate is not being probated, the Department works with the family, attorney, guardian, or other person handling the recipient's estate, to obtain reimbursement of its claim. Waivers based on undue hardship are defined and granted, as stated above.

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Revision: HCFA-PM-95-3 (MB)  
MAY 1995

# STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

## Citation

42 CFR 433.36(c)  
1902(a) (18) and  
1917(a) and (b) of  
the Act

## 4.17 Liens and Adjustments or Recoveries

### (a) Liens

\_\_\_\_\_ The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917 (a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

\_\_\_\_\_ The State imposes liens on real property on account of benefits incorrectly paid.

\_\_\_\_\_ The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (Note: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

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# STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

       The State imposes liens on both real and personal property of an individual after the individual's death.

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h) – (i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

  X   Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.

- (2)   X   The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).

- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

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## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska

- X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

All Medicaid services provided under the Nebraska Title XIX State Plan.

- (4)        The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.

- X The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)

- The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.

- The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

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## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Nebraska(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b)(2) of the Act and regulations at 42 CFR §433.36(h) – (i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
  - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
  - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.

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State/Territory: Nebraska

- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

(d) ATTACHMENT 4.17-A

- (1) Specifies the procedures for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the procedure meets the requirements of 42 CFR 433.36(d).
- (2) Specifies the criteria by which a son or a daughter can establish that he or she has been providing care, as specified under 42 CFR 433.36(f).
- (3) Defines the following terms:
- estate (at a minimum, estate as defined under State probate law). Except for the grandfathered States listed in section 4.17(b)(3), if the State provides a disregard for assets or resources for any individual who received or is entitled to receive benefits under a long term care insurance policy, the definition of estate must include all real, personal property, and assets of an individual (including any property or assets in which the individual had any legal title or interest at the time of death to the extent of the interest and also including the assets conveyed through devices such as joint tenancy, life estate, living trust, or other arrangement),

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- individual's home,
  - equity interest in the home,
  - residing in the home for at least 1 or 2 years,
  - on a continuous basis,
  - discharge from the medical institution and return home, and
  - lawfully residing.
- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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